

At the day appointed for the Service, the Brief and Executions tho' of arc read, and the Verity of the Execution Vouched by the officer and Swit-
 nessed thereto upon oath. M^r Kenzie observes on act 713 Par. 9 § 1. That
 the Inquest consisting only ordinarily of 15 persons are called upon, and
 the same objections allowed to be made against them, as against
 witnesses. But it is not sufficient to call any of them, that he has no
 more as forty pound of rent, nor that he is not inter pares Service or
 Conasball with the person to be served, nor yet that he is not one of
 the neighbour hood, albeit those of the neighbour hood were fellet
 pass upon such an Inquest. In anciently, the Inquests did solely determine
 upon briefs, the business of the Judge ordinary being only to balance
 order them; and they sit as yet with the Judge ordinary or Delegates,
 they must serve, and do sometimes seal the Service with him. They are
 of a Complex Nature, partaking both of Judges and Witnesses, for he
 or more are sufficient to determine Matters of fact, and upon their
 declaration all the rest will serve affirmatively without farther
 Evidence Craig Foud. lib. 2. Tit. 17 § 7. Hair lib. 3. Tit. 5 § 31. No objections
 being made against the persons called to pass upon the Inquest, or as
 objections made being reputed as Irrelevant, they are solemnly sworn
 de fidelit, and Chuse one of their number for their Chancellor.

The Inquest being thus settled, the heir apparent gives in
 the Brief and Execution and his Claim craving to be served
 to the Decayed in such lands or Annual rents &c. together with
 Instructions of the same. Which a person compassing against the
 Service ought to see as July 1629 E. Capell's Contra E. Wigton and
 any person Interposed may appear and object against the Instructions
 of the Claims. The Act 714 Par. 6 § 4 Allows only exceptions against
 the Judge and Inquest, and that of Bastardy, if the Brief was
 openly upon 15 days, and the Execution thereof Indorsed. But Craig
 sustains many more Exceptions, for, 1^o Not only will this objection
 be Relevant to land or a Service, that the Brief was not proclaimed
 on 15 days Hair lib. 3. Tit. 5 § 33 But also Briefs may be
 Impugned if they be taxed or blotted in the Name and Surname of
 the Joloner and Defender, the Name of the land, or the cases
 upon the Briefs were purchased, and the dates Act 114 Par. 9. See
 or if the Executions thereof be blotted in the said blanchets, which
 may not be amended as other Executions 27 July 1626 M^rulloch
 contra M^rulloch 27. A Brief may be quarrelled upon the Account
 that the Decayed was Bastard, and had no lawful issue, or the
 oblainer of the Brief is Bastard, and so Incapable to Interpose
 wherein the proposer of the Exception if he be Injured
 and may name them the other in his Allegation of legitimacy
 will be preferred Craig Foud. lib. 2. Tit. 15 § 5. Tit. 22 § 11 Vers 94

Secundum Regit Hair lib. 3. But for George M^rKenzie observes on
 act 77. Par. 6 § 4. That, that the Allegation of Bastardy is not Receivable
 Summarily against the Service of an heir. This the Lords found that an
 Allegation that the predecessor Decayed was a bastard, should not stay
 and being denied heir to him. For they thought all the exceptions of
 Bastardy which the law (stat 94) ordains to be Received against the
 Service, is to be understood of the Bastardy of him who procures the brief
 and not of the predecessor to whom he desires to be Service, especially
 in cases of Intimacy where the predecessor had Decayed many years
 before: Because the Receiving an Exception of the predecessor being
 bastard, would be a way to stop all Services 15 January 1629. See
 contra Hair 3. If Service may be quarrelled upon the point of right,
 if the Decayed was Divorced of the Free; but not upon parallel rights,
 viz. that his right was not good, or less than better. A^o Objections
 may be founded on the Age of the apparent heir, or his being fore-
 feited &c. When a person going to be served heir to his predecessor
 was afraid of being debarred by borrowings that might be procured
 against him at the Service, the Lord of Session upon his petition,
 gave him a General Relaxation and suspension from all borrowings
 whatsoever to be executed at the Market Cross of Edinburgh, with
 out necessity of any particular Petition, to the end his Brief might
 not be stayed upon the Account of borrowings that might be produced
 against him for the Lord's house that the Service would tend to the
 benefit of the Creditors 19 June 1630 E. Crawford Supp's Account and
 they had no reason to oppose it. 5^o The Instructions and writs
 produced for proving the Claim and head of the Brief may be
 Impugned. But no Exception is to be admitted against the Service,
 unless it be Instantly Verified, Hair lib. 3. M^rKenzie observes on act
 94. Because a Brief of Mortuance is not a Brief of plea. If in
 such Cases Difficulty or Intricacy appears, the Lord's will upon a
 bill offered to them, appoint Affessors to the Judge ordinary or De-
 legates, or advocate the Service to themselves: After Disputing of
 which points in Jure, they remit the Service to the same Judge or
 Delegates. When the objections against the Brief are respected, the person
 claiming to be served must instruct the heads thereof. 10^o

That his predecessor last rest and seized in Fee at the
 Kings peace, which these Comprehends three points, 1^o of the pre-
 cedent's death, which is ordinarily proved by the knowledge of the
 members of Inquest, Notariety, or Common report, without necessity
 to produce Witnesses who saw him die or buried. But when it is
 alleged that he died in a foreign Country, or whose death
 is Contraversted, the same, if a Natural death, requires to be proved